

MOTION FILED
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No. 89-567

IN THE
Supreme Court Of The United States
October Term, 1989

JIM SKINNER FORD, INC.,
Petitioner,

vs.

JACK D. WARREN AND JUANITA WARREN,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Alabama

**MOTION FOR LEAVE TO FILE BRIEF AMICUS
CURIAE AND BRIEF AMICUS CURIAE OF THE
AUTOMOBILE DEALERS ASSOCIATION
OF ALABAMA, INC. AND THE ALABAMA
INDEPENDENT AUTOMOBILE DEALERS
ASSOCIATION, INC. IN SUPPORT OF
THE PETITION FOR CERTIORARI
OF JIM SKINNER FORD, INC.**

ROBERT A. HUFFAKER, ESQ.
Counsel of Record

General Counsel
Automobile Dealers Association
of Alabama, Inc.
Post Office Box 270
Montgomery, Alabama 36195
Telephone: (205) 834-8480

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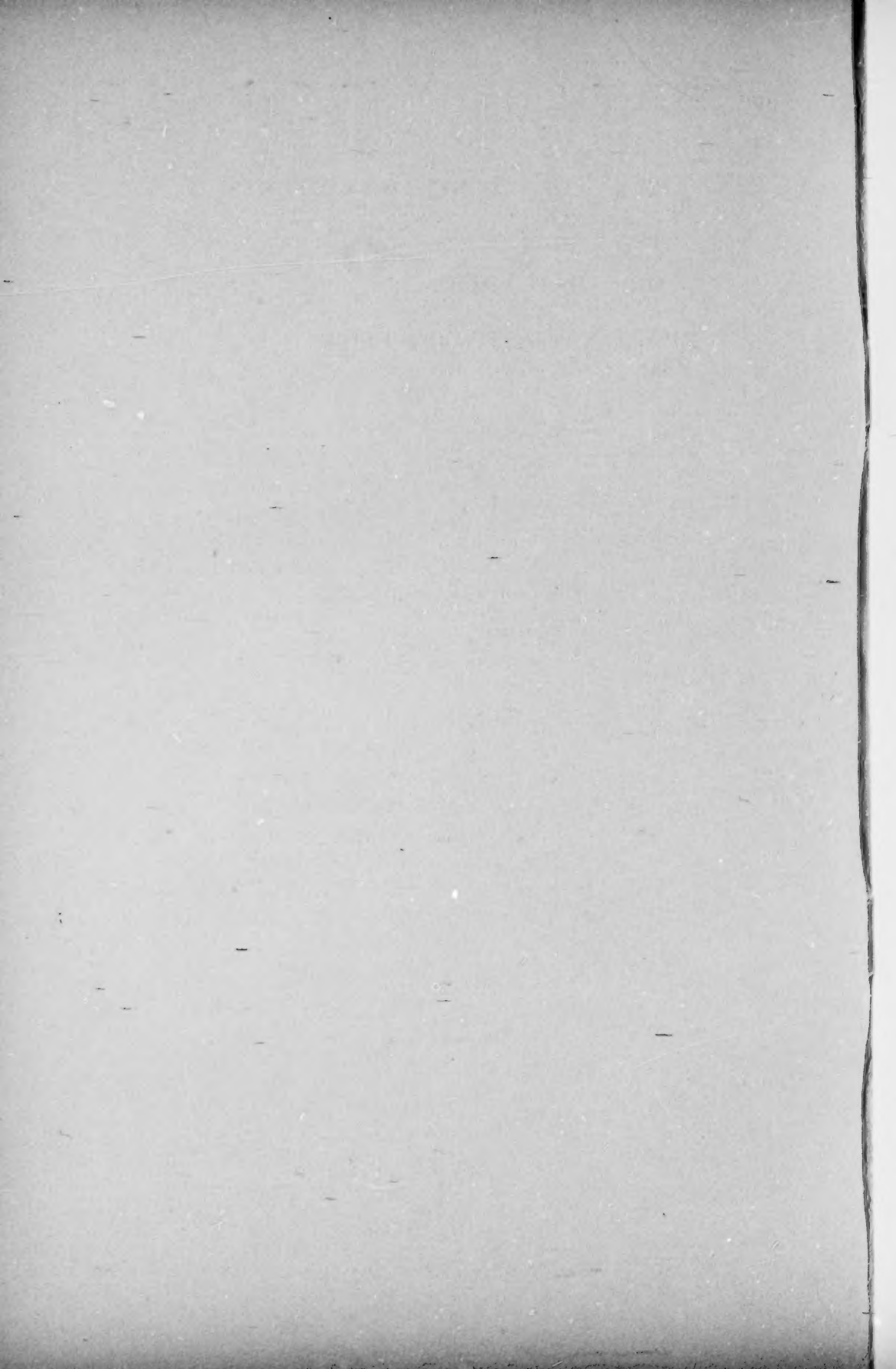


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**MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE**

The Automobile Dealers Association of Alabama, Inc. (ADAA) and the Alabama Independent Automobile Dealers Association, Inc. (AIAA) respectfully move this Court for leave to file the accompanying brief as amicus curiae in support of the position of the Petitioner in this case. Consent to the filing of an amicus curiae brief has been requested of the Petitioner and the Respondent and has been obtained from the Petitioner. The Respondent has neither consented to nor objected to the filing of an amicus curiae brief as of the date of the filing hereof.

The ADAA and the AIADA are trade associations comprised of over 1,000 new and used automobile dealer-members located throughout the State of Alabama. ADAA and AIADA are affiliated with the National Automobile Dealers Association (NADA) and the National Independent Automobile Dealers Association (NIADA) which have over 14,000 new and used automobile dealer-members throughout the United States.

ADAA and AIADA's objectives include promoting the business of its members and assisting automobile dealers to comply with various state and federal laws and regulations affecting their business operations. Both trade associations work in concert with their respective parent organizations to encourage state legislatures and Congress to standardize laws and administrative procedures regulating the automobile industry throughout the United States.

Many of these members maintain their principal business addresses in Alabama but actually conduct business in Alabama and surrounding states. These businesses, although not parties to this action, are directly affected by the decision of the Alabama Supreme Court in *Ex Parte Jack D. Warren*.

In addition, one of these members currently has litigation pending in the United States District Court for the Northern District of Alabama, Southern Division, in which that Court has stayed the civil action in favor of arbitration under the provisions of 9 U.S.C. §1, *et seq.*, refusing to follow *Ex Parte Jack D. Warren*.¹

ADAA and AIADA are filing this motion and brief to express their concern that automobile dealers conducting business in Alabama are not being offered the same federal rights under 9 U.S.C. §1, *et seq.*, as businesses in other states, and to point out the uncertainty of their rights and remedies resulting from the *Ex Parte Jack D. Warren* decision.

¹*Terri O. Williams vs. Dan Tucker Auto Sales, Inc.*, (89-AR-1350-S). Copies of the Motion to Stay, Motion to Remand and Order, in this unreported case are set forth in the Appendix to this Brief. (App. at A-1-5).

For these reasons, this motion for leave to file an amicus curiae brief should be granted.

Respectfully submitted,

ROBERT A. HUFFAKER, ESQ.
Counsel of Record

General Counsel
Automobile Dealers Association
of Alabama, Inc.
Post Office Box 270
Montgomery, Alabama 36195
Telephone: (205) 834-8480



IN THE
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October Term, 1989

JIM SKINNER FORD, INC.,
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**BRIEF AMICUS CURIAE OF THE
AUTOMOBILE DEALERS ASSOCIATION
OF ALABAMA, INC. AND THE ALABAMA
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ASSOCIATION, INC. IN SUPPORT OF
THE PETITION FOR CERTIORARI
OF JIM SKINNER FORD, INC.**

**INTEREST OF THE ADAA AND THE AIADA
AS AMICUS CURIAE**

The Automobile Dealers Association of Alabama, Inc. ("ADAA") and the Alabama Independent Automobile Dealers Association, Inc. ("AIADA") are trade associations comprised of over 1,000 new and used automobile dealers-members located throughout the State of Alabama. ADAA and AIADA are affiliated with the National Automobile

Dealers Association and the National Independent Automobile Dealers Association, which together have 14,000 new and used automobile dealer-members throughout the United States. The ADAA and AIADA's objectives include promoting the business of its members and assisting automobile dealers in complying with various federal and state laws and regulations affecting the sales of motor vehicles. These dealer-members, although not parties to this action, are directly affected by the Alabama Supreme Court's refusal to apply the provisions of the Federal Arbitration Act ("FAA") 9 U.S.C. §1, *et seq.*, to the intrastate sale of motor vehicles.

The 1,000 dealer-members of ADAA and AIADA account for nearly all of the 1,200,000 automobiles sold in Alabama annually. Many of these sales are made pursuant to contracts which, like the contract in *Warren*, contain arbitration agreements. In Alabama, an estimated 200,000 of the automobile sales contracts executed in 1988 contained arbitration agreements.¹ Dealers who have used such arbitration agreements and others who may wish to use such arbitration agreements in the future are directly and adversely affected by the refusal of the Alabama Supreme Court to enforce arbitration agreements in new car sales contracts.

The opinion of the Alabama Supreme Court in *Ex Parte Jack D. Warren*, ___ So.2d ___ (1989), violates the federal rights of ADAA and AIADA members under the FAA to enforce arbitration agreements in automobile sales contracts, and stands in direct conflict with this Court's holdings in *Southland Corp. v. Keating*, 465 U.S. 1 (1984), and *Perry v. Thomas*, 482 U.S. 483 (1987).

This brief amicus curiae is filed contingent upon the granting of the foregoing motion for leave to file said brief. The ADAA and AIADA submit this amicus curiae brief to demonstrate that the Alabama Supreme Court's erroneous

¹The figures set forth herein are based upon AIADA records or estimates.

ruling below has costly and far-reaching effects for numerous dealers, consumers and litigants, including the 1,000 plus dealer-members of the ADAA and AIADA.

ARGUMENT

The Decision of the Alabama Supreme Court Deprives Numerous Alabama New Car Dealers of the Right to Enforce Arbitration Agreements and Promotes Forum Shopping.

The Alabama Supreme Court in *Ex Parte Jack D. Warren* held that the test under the Federal Arbitration Act for determining whether a transaction involves interstate commerce is a distinct standard unique to the application of the FAA, finding that Congress did not utilize its full Commerce Clause powers. The Court below held that in order for an arbitration agreement to be enforceable, the parties to the written agreement must contemplate substantial interstate activity. As noted in the petition for certiorari filed by Jim Skinner Ford, Inc., that conclusion is wrong. It stands in direct conflict with the decisions of this Court in *Perry v. Thomas*, 482 U.S. 483 (1987), and *Southland Corp. v. Keating*, 465 U.S. 1 (1984). The mechanism of summary reversal was created for cases such as this, so clear is the conflict between the decision of the court below and this Court's decisions in *Perry* and *Southland*. For the reasons set forth in the petition for certiorari, and because of the importance of the issue as discussed below, this Court should grant a writ of certiorari and summarily reverse the decision below.

There are 1,000 dealer-members of ADAA and AIADA. These dealer members account for nearly all of the 1,200,000 automobiles sold in Alabama annually, all of which are manufactured outside Alabama and originally distributed by the manufacturers in interstate commerce. Many of those sales are made pursuant to contracts which, like the contract in *Warren*, contain arbitration agreements. In Alabama, at least 200,000 of the automobile sales contracts executed in 1988 contained arbitration agreements. How-

ever, the substantial benefits which could be achieved through the use of the arbitration provisions in these sales contracts are now illusory in Alabama due to the erroneous decision of the court below.

The decision of the Alabama Supreme Court in *Ex Parte Jack D. Warren* adversely affects all of the 1,000 member dealers of the ADAA and the AIADA. Their federal right to enforce arbitration agreements in their automobile sales contracts will not be honored in the state courts of Alabama. The decision below renders the FAA and its policies ineffective in a large number of cases and prevents dealers from effectively reducing their dispute resolution costs through arbitration. The increased costs of resolving warranty claims and related disputes that necessarily will result from the Alabama Supreme Court's ruling ultimately will be passed to automobile purchasers in the form of higher automobile prices.

Of course, some consumers may not wish to purchase automobiles from dealers using arbitration agreements, and they certainly have that option. In Alabama, a citizen interested in purchasing an automobile can choose from hundreds of dealers all selling basically the same products. What frequently separates one dealer from another is price and the terms of the sale. Some dealers have incorporated arbitration agreements into their written contracts, while some have not. Some dealers employ such agreements as a selling tool, noting that disputes can be quickly and inexpensively disposed of without protracted, time-consuming and expensive litigation — the very purpose of the FAA. Still, if consumers do not wish to purchase their automobile from a dealer using arbitration agreements in its sales contracts, they are not required to do so. In the greater Birmingham metropolitan area — where Jim Skinner Ford conducts business — a consumer can purchase a new motor vehicle from 97 different dealers. Of these, 40 utilize predispute arbitration agreements in their sales contracts while the others do not.

In any event, automobile dealers and citizens alike have a right to expect that federal laws will be uniformly applied

across the country. Anything less defies the announced intent of Congress in passing the FAA — to enact a “national policy favoring arbitration and withdrawing the power of states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.” *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984). The decision of the Alabama Supreme Court below not only “requires the judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration,” but also lays the groundwork for forum shopping between state and federal courts. The Alabama Supreme Court itself brings this issue into sharp focus by its statement in *Ex Parte Jack D. Warren* that “the enforcement of predispute arbitration agreements, while approved in the federal court system . . . is specifically prohibited by Alabama Code (1975) §8-1-4(3).” — So.2d at — .

Nor is the threat of forum shopping illusory. In fact, one of the members of the ADAA and AIADA is currently involved in litigation in which the United States District Court for the Northern District of Alabama, Southern Division has stayed the civil action in favor of arbitration under the provisions of the FAA, refusing to follow *Ex Parte Jack D. Warren*. See *Terri O. Williams v. Dan Tucker Auto Sales, Inc.*, (CV-89-AR-1350-S) (copies of the Motion to Stay, Motion to Remand, and Order to Stay in this unreported case are set forth in the appendix to this brief). Thus, the enforceability of arbitration agreements in automobile sales contracts in Alabama will now turn on whether the litigants are in state or federal court. This is precisely the result Congress sought to avoid in enacting the FAA. See e.g. *Southland Corp. v. Keating*, 465 U.S. 1, 14-16 (1984); *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 26, n. 34 (1983).

CONCLUSION

For the foregoing reasons, the Automobile Dealers Association of Alabama, Inc. and the Alabama Independent Automobile Dealers Association, Inc. respectfully request

that the Petition for Writ of Certiorari in this cause be granted. The ADAA and AIADA submit that the decision of the Court below should be summarily reversed on authority of *Perry v. Thomas*, 482 U.S. 483 (1987) and *Southland Corp. v. Keating*, 465 U.S. 1 (1984).

Respectfully submitted,

ROBERT A. HUFFAKER
Counsel of Record

General Counsel
Automobile Dealers Association
of Alabama, Inc.
Post Office Box 270
Montgomery, Alabama 36195
Telephone: (205) 834-8480

APPENDIX

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

TERRI O. WILLIAMS,)	
)	
PLAINTIFF,)	
)	Civil Action No:
VS.)	CV-89-AR-1350-S
)	
DAN TUCKER AUTO SALES, INC.)	
and GENE BOLTON,)	
)	
DEFENDANTS.)	

MOTION TO STAY

Comes now Dan Tucker Auto Sales, Inc. and Gene Bolton and moves the Court to stay this action and require the plaintiff to submit her dispute to binding arbitration, pursuant to the provisions of 9 USC §1, et. seq., and according to the Commercial Rules of Arbitration of the American Arbitration Association.

In support hereof, your movants show as follows:

1. On or about April 15, 1989 the Plaintiff and the Defendant Dan Tucker Auto Sales, Inc. entered into a written agreement to arbitrate any dispute arising out of the transaction sued upon by the Plaintiff at bar. A copy of such agreement is attached hereto, incorporated herein by reference, and attached as Exhibit "A". At the time, the Defendant, Gene Bolton was an agent and employee of Dan Tucker Auto Sales, Inc., acting at all times within the line and scope of his employment for said dealership.¹

¹Your movants have highlighted the arbitration language in the attached Exhibit for the Court's convenience. The arbitration clause on the original document signed by the Plaintiff, is in bold red print on white paper, contrasted from the dark blue print of the remaining printed portion of the form.

2. The transaction between the parties involved commerce. The action commenced by the Plaintiff at bar asserts a federal cause of action (the Motor Vehicle Information and Costs Savings Act, 15 *USC* §1981) which was promulgated by Congress under its Commerce powers, and is based upon the Congressional finding that the sale of motor vehicles has an impact upon commerce.

3. Additionally, the Plaintiff previously submitted this dispute to binding arbitration and participated in the process of arbitration heretofore, but refused to complete said process having instead elected to file this action. Copies of documents from Plaintiff's counsel to the American Arbitration Association, showing such participation in arbitration are attached hereto, marked collectively as Exhibit "B" and incorporated herein by reference.

4. An arbitrator has been selected and the matter is scheduled for hearing in the fall of 1989, only having been delayed by Plaintiff's counsel's request to the Arbitrator to be permitted to conduct limited discovery.

WHEREFORE, and pursuant to 9 *USC* §1, et. seq., the Defendants move as aforesaid.

Respectfully submitted,

/s/ John Martin Galese

by John Martin Galese, Esq.

of Counsel:

GALESE AND MOORE
3058 Independence Drive
P.O. Box 75061
Birmingham, Alabama 35253
(205) 870-0663

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the above and foregoing document upon all counsel of record in this cause, U.S. Mail, postage prepaid, to their proper office addresses, on this the 4th day of August, 1989.

/s/ John Martin Galese

by John Martin Galese, Esq.

IN THE UNITED STATES DISTRICT COURT
- NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

TERRI O. WILLIAMS,)	
)	
Plaintiff,)	
)	CIVIL ACTION
VS.)	NUMBER
)	CV 89-AR 1350S
DAN TUCKER AUTO SALES, INC.)	
and GENE BOLTON,)	
)	
Defendants.)	

MOTION TO REMAND

Comes now the Plaintiff by and through her attorney of record, and moves this Court to remand the above-referenced action to this Circuit Court of Jefferson County, and as grounds for said motion would submit the following:

1. Suit was filed in the above-referenced cause in Jefferson County Circuit Court, Alabama, on July 20, 1989.

2. Plaintiff has alleged in her Complaint, a copy of which is attached hereto and made a part hereof as Exhibit "A", various causes of action and theories of recovery, to wit: (a) an action under the Motor Vehicle Information and Costs Savings Act, 15 USC § 1981 et seq.; (b) an action for misrepresentation under the laws of the State of Alabama; (c) an action for fraud under the laws of the State of Alabama; and (d) an action for outrageous conduct under the laws of the State of Alabama.

3. The only basis for the removal of this action from Jefferson County Circuit Court to the Northern District of Alabama, Southern Division, is the allegation by defense counsel that said action is brought under the Motor Vehicle

Information and Costs Savings Act. Under said act, in 15 USC § 1989 (b), it is plainly set out: "An action to enforce any liability created under Subsection (a) of this section, may be brought in a United States District Court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises."

4. The Defendants have, on the same date that the Petition for Removal was filed, filed a Motion to Stay any and all legal proceedings brought by Plaintiff against Defendant on the basis of an arbitration agreement purportedly entered into between Plaintiff and Defendant at the time of the purchase of the automobile made the basis of the dispute. Plaintiff would submit that the Alabama Supreme Court, in the case of *Ex Parte Warren* — So. 2d — (July 7, 1989), stated, "The enforcement of predispute arbitration agreements, while approved in the Federal Court system . . . is specifically prohibited by Alabama Code 1975, § 8-1-41(3)."

WHEREFORE, Terri O. Williams, moves the Court to remand this case to Jefferson County Circuit Court, on the basis of 15 USC § 1989 and Alabama state law.

/s/ Michael L. McKerley

Michael L. McKerley

PRITCHARD, McCALL & JONES
800 Financial Center
505 North 20th Street
Birmingham, Alabama 35203-2605

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing pleading upon all counsel of record by placing a copy of same in the United States mail, first-class postage prepaid, this 11th day of August, 1989, as follows:

John Martin Galese
Galese and Moore
3058 Independence Drive
Post Office Box 75061
Birmingham, Alabama 35253

/s/ Michael L. McKerley

OF COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

TERRI O. WILLIAMS,)	
)	
Plaintiff,)	
)	CIVIL ACTION
VS.)	NO.:
)	89-AR-13508S
DAN TUCKER AUTO SALES, INC.)	
ET AL.)	
)	
Defendants.)	

ORDER

The court has for consideration the motion of plaintiff, Terri O. Williams, to remand the above-entitled cause to the Circuit Court of Jefferson County, and the motion of defendants, Dan Tucker Auto Sales, Inc., and Gene Bolton, to stay the action while requiring plaintiff to proceed with binding arbitration of the issues she would present in this cause.

The motion to remand is not well taken and is DENIED. The motion for a stay is well taken and is GRANTED. There shall be no discovery or other activity in this court pending resolution of the issues by and between the parties by the arbitrator selected in accordance with the arbitration agreement attached as Exhibit "A" to defendants' motion to stay. Within ten (10) days after the arbitrator's decision, a copy of that decision shall be filed with the Clerk in order that this action can thereupon be mooted or otherwise appropriately disposed of.

DONE this 16th day of August, 1989.

/s/ William M. Acker, Jr.

- WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE